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November 18, 2002

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte*
UNE Triennial Review – CC Docket No. 01-338
Local Competition – CC Docket No. 96-98
Deployment of Advanced Wireline Services – CC Docket No. 98-147

Dear Ms. Dortch:

Attached for inclusion in the record of the above-referenced proceedings pursuant to 47 C.F.R. § 1.1206(b) is a letter to William F. Maher, Chief of the FCC's Wireline Competition Bureau, from Donna Sorgi, Vice President of Federal Advocacy for WorldCom, Inc.

Sincerely,

/s/ Ruth Milkman
Ruth Milkman

Attachment

cc: Scott Bergmann
Matthew Brill
Michelle Carey
Jeffrey Carlisle
Jordan Goldstein
Daniel Gonzalez
Linda Kinney
Christopher Libertelli
William F. Maher
Jeremy Miller
Thomas Navin
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November 18, 2002

William F. Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
Washington, DC 20554

Re: UNE Triennial Review: Principles and Standards for State Commissions

Dear Mr. Maher:

In its pleadings in this proceeding, WorldCom has pointed out that the availability of the UNE platform (UNE-P) has enabled local competition for residential and small business customers finally to begin to take hold. The ability to use UNE-P to attract customers also is essential to maintaining vibrant long distance competition. In addition, WorldCom has explained that UNE-P-based local competition is in its infancy, and as the subscriber base grows, competitive carriers will have strong commercial incentives to transition to their own switches (or the facilities of a provider of wholesale switching), wherever the conditions are right. It is also true, however, that some of the economic and operational barriers that currently impede a transition from UNE-P to UNE-L could be removed or substantially lowered through concerted action by the Federal Communications Commission and the state commissions. This letter, therefore, identifies the economic and operational barriers and describes the actions that the FCC and state commissions could undertake to remove these barriers. In addition, WorldCom proposes principles and standards that the Commission could adopt, and the state commissions could apply, in determining the circumstances in which a requesting carrier would not be impaired without non-discriminatory access to unbundled local switching.

Economic and Operational Barriers to Use of a Competitive Switch for Mass Market Customers

With the advent of UNE-P-based local competition, and the Commission's grant of in-region interLATA authority to the Bell Operating Companies (BOCs) in a substantial and growing number of states, many residential and small business customers are taking local and long distance services from the same carrier.[1] The BOCs need not make major capital expenditures in order to acquire the facilities required to provide long distance service; they can

[1] Once granted in-region interLATA authority, the BOCs have quickly gained share in long distance, and the competitive carriers have lost long distance share. *See* Legg Mason, Quantifying the Cost of Consumer Competition at 2-3 (Oct. 8, 2002) (Verizon had a 29% residential long distance share in New York after 24 months, and a 29% share in Massachusetts after 13 months; SBC had a 22% share in Texas after 6 months, and is approaching a 40% share after roughly two years).

lease existing long distance capacity at "very low rates."[2] In addition, as an operational matter, it is extremely easy and inexpensive for customers to switch long distance carriers. For competitive carriers, the availability of UNE-P at TELRIC rates makes it possible to compete with the BOCs in offering local and long distance packages to residential and small business customers. Current loop provisioning capabilities and economics, however, make it infeasible for a competitive carrier to offer service to mass market customers using the carrier's own switch. If competitive carriers are to use their own switches (or those of wholesale switching providers) to compete successfully with the BOCs in the provision of local/long distance packages or "all distance" services to residential and small business (or mass markets) customers, both economic and operational barriers must be addressed.

Economic barriers. The incumbent local exchange carriers (LECs) enjoy substantial economies of scale with respect to all the functions of the local exchange network, including switching, loops, and transport. While the economies of scale for switching are less pronounced than the economies of scale associated with loops and transport, a competitive carrier could not compete effectively with the incumbent LEC if it were required to install its own switch in every incumbent LEC central office. Rather, competitive LECs must be able to aggregate traffic from many customers served by multiple central offices and backhaul it to a switch. In turn, this requires that a competitor's costs of aggregating and backhauling traffic approximate the incumbent LECs' economies of scale in backhaul facilities (loops and transport). In addition, even in cases in which the competitive carrier has an existing switch in the relevant geographic area, the carrier will have to incur additional costs to connect the customer's loop to the switch.[3] If the competitive carrier does not currently have a switch in place, the carrier would have to buy a switch, collocate in a central office and purchase or build transport back to the switch. An economic alternative to collocation may be the use of loop-transport combinations (enhanced extended links, or EELs), depending on availability and price.[4] It is worth noting that many of

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2 Legg Mason, *Washington Telecom & Media Insider* at 2 (Nov. 8, 2002); Martha McKay, "Verizon Aims to Take AT&T, MCI Turf," *The Record*, Hackensack, NJ (Nov. 5, 2002).

3 *See Ex Parte* Presentation, "Transitioning to Unbundled Loops: Case Study," attached to Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-338 (Nov. 18, 2002) (discussing the costs incurred by competitive LECs in connecting loops to their own switches).

4 As discussed in a recent written *ex parte* filing by WorldCom, the use restrictions and prohibition on commingling that currently apply to EELs should be eliminated immediately. *See* Memorandum, "Legal and Policy Considerations with Respect to EELs," attached to Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-338 (Nov. 18, 2002). In particular, the Commission's prohibition against commingling prevents competitive carriers from achieving scale economies that are available from maintaining a unified transport network using higher capacity, instead of a bifurcated network using lower capacity facilities. The incumbent LECs, of course, maximize their transport efficiencies by combining all circuits into a single, unified network. Continuation of these restrictions would only postpone the day when the FCC or a state commission may conclude that competitive

the costs (*e.g.,* the cost of collocation) are both fixed and sunk, and thus are characteristic of the costs faced by new entrants in the telecommunications sector, but not in other sectors. Incumbent LECs need not incur collocation costs, nor are these costs that would be incurred by a new entrant in other lines of business.[5]

Finally, if a competitive carrier connects its customers' loops to its own switch, the carrier must pay additional non-recurring charges to the incumbent LEC. The non-recurring charges assessed by incumbent LECs for provisioning this connection (sometimes called a "hot cut") vary widely, from a few dollars in some states to over one hundred dollars in others.[6] In the vast majority of cases, it is difficult to see how one could make a credible argument that these non-recurring charges are based on TELRIC.

Operational Barriers. In order for competitive carriers to use their own switches to compete with incumbent LECs, the process by which customers are transferred from one local provider to another must be seamless and inexpensive. After years of state commission oversight of UNE-P provisioning and pricing, many states now have such processes in place for UNE-P. The process for transferring a local customer to a competitive product based on UNE-loop (rather than UNE-P), however, is manual, expensive, and, experience has shown, very susceptible to service disruption. The manual provisioning process for connecting UNE loops to a competitor's switch means that it is not scalable, and currently incumbent LECs are incapable of provisioning the volumes necessary for mass market customers.[7] Consequently, UNE-P is essential for acquisition of new customers, given the state of development in facilities infrastructure, process and standards. But even if customers are acquired via UNE-P, the provisioning process for migrating the customer to the competitor's switch must be substantially improved (with respect to both quality and price) before competitive carriers will have a realistic opportunity to serve mass market customers using their own switches.

State Commission Activity Required to Lower Barriers

In order to conclude that requesting carriers are not impaired without non-discriminatory access to unbundled switching, it will be essential to investigate and remove or lower the existing

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carriers have a reasonable opportunity to compete, given the advantages that the incumbent LECs derive from their economies of scale in backhaul.

5 *See* Memorandum, "Legal Issues Presented in the UNE Triennial Review," at 2-4, attached to Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-338 (Oct. 23, 2002).

6 *See Ex Parte Presentation,* "Delivering Local Competition to the Mass Market: Considerations for Transitioning to UNE-L Based Strategy," at 12, attached to Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-338 (Nov. 5, 2002).

7 *See* WorldCom Reply Comments, CC Dkt. No. 01-338, at 145 (July 17, 2002).

barriers described above. As the BOCs themselves have argued, their costs and processes vary from state to state. Consequently, state commissions, which are well equipped to deal with variations, and tailor solutions to the circumstances in their own states, are best suited to address these economic and operational barriers. Nor is such a division of labor unprecedented; the detailed fact-finding and other work of the state commissions in evaluating BOC applications for authority to offer in-region interLATA services pursuant to Section 271 has been invaluable. Clearly, the FCC could not have duplicated those extraordinary efforts.

Therefore, WorldCom recommends that the Commission establish principles and standards for the state commissions to apply in conducting the impairment analysis required by Section 251(d)(2). As a threshold matter, state commissions will need to investigate and resolve the economic and operational issues identified above, before applying these principles and standards. Thus, for example, state commissions would be expected to commence proceedings to consider the following:

- Economic factors:
  - Pricing and availability of collocation (physical and virtual)
  - Pricing and availability of alternative means of gaining access to loops other than collocation in all central offices
  - Transport costs, including all variations of EELs
  - Loop migration costs, including project migrations
  - Other costs incurred by competitive carriers in transitioning to existing and new facilities

- Operational factors:
  - Existence of loop provisioning process that enables customers to switch easily and quickly between facilities-based carriers without service disruption on the scale required for mass markets services
  - Establishment of terms, conditions and procedures for implementation of efficient loop provisioning[8]
  - Unbundling of all loop types, including IDLC
  - Resolution of all CLEC-CLEC migration scenarios
  - Resolution of customer-affecting matters relating to transition from UNE-P to UNE-L, including LNP and 911 issues

Once the state commissions have concluded their investigations of the economic and operational issues described above, the results of those investigations, and any concomitant changes in incumbent LEC pricing or processes, can be factored into the impairment analysis.

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[8] For purposes of this *ex parte*, we have used the term "efficient loop provisioning" to denote a level of provisioning that is not necessarily electronic loop provisioning, but still capable of allowing competitive carriers to transition customers from UNE-P to their own switches either on a project basis, or for a single customer.

For convenience, we have attached to this letter a summary of the principles and standards that state commissions could use to conduct that analysis.

Very truly yours,

Sincerely,

/s/ Donna Sorgi

Donna Sorgi

Attachment

Principles and Standards for State Commission Analysis of Impairment With Respect to Unbundled Switching

For purposes of Section 251(d)(2), requesting carriers are impaired without non-discriminatory access to unbundled switching unless a state commission makes a determination, pursuant to these principles and standards, that a requesting carrier is not impaired in a specific geographic area within that state.

Acquisition of Customers

With respect to the acquisition of customers, a state commission must conclude that a requesting carrier is impaired without non-discriminatory access to unbundled switching, unless the incumbent local exchange carrier (LEC) has implemented electronic loop provisioning, or its equivalent. In making its determination as to whether electronic loop provisioning (or its equivalent) has been implemented, the state commission must consider the following factors:

(1) Timeliness;
(2) Accuracy;
(3) Comparability to acquisition of customers by long distance carriers;
(4) Scalability.

Once electronic loop provisioning or its equivalent has been implemented, the state must also determine, in light of the factors described below, whether the requesting carrier is able to compete effectively with the incumbent LEC. The state may consider additional relevant factors.

Transition of Customers

With respect to customers that have been acquired via the unbundled network element platform (UNE-P), the state commission may conclude that the requesting carrier is not impaired in its provision of ongoing service to those customers only if: (1) the requesting carrier is no longer disadvantaged by the economies of scale in local transmission networks enjoyed by the incumbent LECs; (2) the charges assessed by the incumbent LECs for migrations are cost-based and set at levels that provide the requesting carrier a realistic opportunity to compete; and (3) the incumbent LEC provisions loops efficiently. This analysis should be applied on a location-specific basis. The location considered may be a central office and/or a cluster of central offices. In the event that the state commission concludes that the conditions permit customers to be transferred to a competing LEC's switch, incumbent LECs are required to continue to provide unbundled switching to that competing LEC during the period needed by the carrier to complete any necessary upgrade to its existing facilities and install new facilities required to provide service on a UNE-L basis to existing and future customers.

Economic Factors

In determining whether the requesting carrier is no longer disadvantaged by the superior economies of scale enjoyed by the incumbent LEC, the state commission must consider the following factors:

(1) The requesting carrier's existing facilities, including whether the carrier is collocated in the central office, and whether it has transmission facilities in place connecting the collocation to an existing switch;
(2) The number of customers served by the requesting carrier in that central office, and in nearby central offices;
(3) The per-unit cost of any new facilities or upgrades that are required, including collocation, transmission facilities (including EELs) and switching;

In determining whether the costs that a competitive carrier will incur to migrate customers are at levels that do not impair the ability of requesting carriers to offer telecommunications services, the state commission must consider the charges assessed by the incumbent LEC for migrating loops, including project migrations.

Operational Factors

In determining whether an incumbent LEC satisfies the efficient loop provisioning requirement, the state commission must consider the following factors for both single line and project cutovers:

(1) Timeliness, including the time required to transfer a single customer to the requesting carrier's switch, and the time required to transfer the entire embedded base of the requesting carrier's customers in that central office;
(2) Scalability;
(3) Service disruption;
(4) Effectiveness of provisioning for all types of loops, including IDLC;
(5) Effectiveness of provisioning for migrating of customers between competitive carriers, as well as between the incumbent LEC and a competitive carrier;
(6) Resolution of customer-affecting matters, including local number portability and 911.

Third-party testing to ensure that terms, conditions and procedures for efficient loop provisioning are in place and working well is strongly encouraged.

In conducting its analysis of impairment, the state commission may consider additional relevant factors.